



**JONATHAN E. FIELDING, M.D., M.P.H.**  
Director and Health Officer

**JONATHAN E. FREEDMAN**  
Chief Deputy Director

313 North Figueroa Street, Room 806  
Los Angeles, California 90012  
TEL (213) 240-8117 • FAX (213) 975-1273

[www.publichealth.lacounty.gov](http://www.publichealth.lacounty.gov)



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July 9, 2009

TO: Each Supervisor

FROM: Jonathan E. Fielding, M.D., M.P.H. *J. Fielding*  
Director and Health Officer

SUBJECT: **MEDIA REPORTS ON LOCAL ENFORCEMENT OF THE FEDERAL VIRGINIA GRAEME BAKER POOL AND SPA SAFETY ACT**

This is to inform you of two media stories (one aired on July 6, 2009 and one possibly to air in the near future) related to the Virginia Graeme Baker Pool and Spa Safety Act and the role that the Department of Public Health (DPH) Environmental Health (EH) Division plays in enforcing the provisions of this act.

On July 6, 2009, a news story on the federal Virginia Graeme Baker Pool and Spa Safety Act aired on "The Today Show" on NBC. This report indicated that 90% of the commercial swimming pools in Los Angeles County were out of compliance with the federal Virginia Graeme Baker Pool and Spa Safety Act. KCBS has also interviewed DPH staff about this issue.

As background, in December 2007, the Virginia Graeme Baker Pool and Spa Safety Act was passed in response to an incident where a child was entrapped on the bottom of a pool due to suction from a pool drain. The provisions of the Act required that by December 19, 2008, all commercial swimming pools and spas must be modified to protect against drain entrapment by the use of an "anti-entrapment" drain cover, and the installation of either: (1) an automatic pump shut-off system that activates when a drain is blocked; or (2) the installation of a "split main drain" so the suction is dispersed, rendering the drain incapable of entrapment.

Under this Act, the Consumer Product Safety Commission is charged with enforcement. As of the date of this memo, no enforcement authority has been delegated to local jurisdictions, including the County. The County does not have the authority to require existing, non-conforming commercial pools to make these modifications, nor does it have general jurisdiction over private swimming pools. County Counsel agrees with this analysis. Because DPH is supportive of the provisions in the federal Act, DPH has been working with the State of California and a coalition of other county and city environmental health departments on establishing local authority. One possible venue is State Assembly Bill 1020 authored by Assemblymember Bill Emmerson, which would enable local agencies to enforce anti-entrapment measures on new and existing commercial swimming pools.

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A significant time before the enactment of the Virginia Graeme Baker Act, DPH recognized the importance of anti-entrapment measures. Since 1985, DPH has required that *new* commercial pools and spas be equipped with split main drains (consistent with Option 2 of the Act as stated above). In Los Angeles County, 16,000 swimming pools and spas are subject to this Act and the DPH requirement. To date, an estimated 7,200 of the 16,000 pools (i.e. 45%) have "split main drains" which ensure against entrapment. This leaves 55% of the existing commercial pool inventory subject to DPH regulation that still requires anti-entrapment modifications, *not* the 90% suggested in the NBC report.

Since enactment of the Act in 2008, DPH has expanded its requirements to include *existing* pools and spas that undergo renovation. This expanded policy requires that whenever an existing pool is re-plumbed, resurfaced, renovated, or drained for any reason, it also must be retrofitted with split main drains or an automatic pump shut-off system. In contrast to the federal Act, however, this requirement does not extend to existing pools that are not undergoing some sort of renovation. If passed, Assembly Bill 1020 would expand the purview of the Virginia Graeme Baker Pool and Spa Safety Act to require that all commercial pools and spas install new drains.

If you should have any questions, please let me know.

JEF:ajb

c: Chief Executive Officer  
Acting County Counsel  
Executive Officer, Board of Supervisors